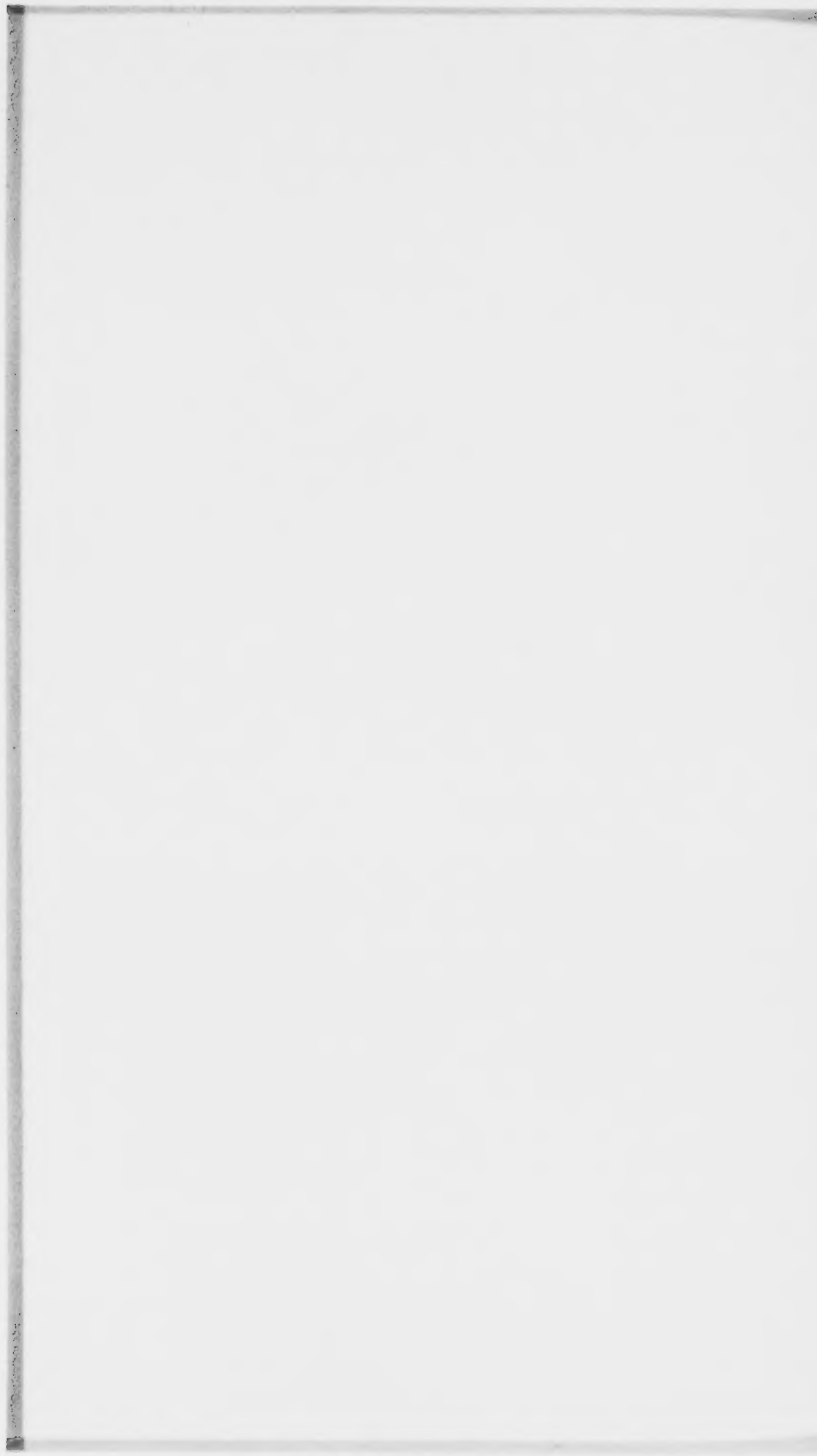

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 749

WELLS FARGO BANK & TRUST COMPANY,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

NATHAN R. MARGOLD,
Solicitor for the
Department of the Interior,
Washington, D. C.

Attorney for Respondent.

ROMAN OZAETA,
Solicitor General of the Philippines,
Manila, P. I.

ROBERT E. FRIEDMAN,
Assistant Solicitor,
Department of the Interior,
Washington, D. C.

Of Counsel.

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BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The decision of the Court of First Instance of Manila appears in full in the transcript of record (R. 121-127). The decision of the Supreme Court of the Commonwealth of the Philippines, affirming the judgment of the trial court, also appears in full in the transcript of record (R. 128-138). Motion for reconsideration (R. 138-139) submitted by counsel for petitioner (plaintiff below) was denied by the Supreme Court of the Philippines (R. 146).

Jurisdiction

Final judgment was entered by the Supreme Court of the Philippines on August 6, 1940 (R. 146). Petition for writ of certiorari was filed February 5, 1941, together with a supporting brief and transcript of record. Petitioner seeks to invoke the jurisdiction of this Court under section 7 of the act of February 13, 1925 (43 Stat. 936, 940, 28 U. S. C. sec. 349).

Statute Involved

The statute involved herein is section 1536 of the Philippine Administrative Code (act No. 2711 of 1917), the pertinent provisions of which are as follows:

> Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership, business, or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax: * * *.

Questions Involved

1. Whether the petitioner presents a sufficient basis for certiorari in contending that the Supreme Court of the Philippines erred in holding that section 1536, *supra,* imposed a succession tax on the transfer of a nonresident decedent's shares in a Philippine anonymous partnership where such shares had always been located in the Philippines and were, at the time of transfer, in the possession of a Philippine resident, to whom they had been delivered, indorsed in blank.

2. Whether the petitioner presents a sufficient basis for certiorari in contending that section 1536, so construed, deprives petitioner of property without due process of law.

Statement

Petitioner, as trustee of the trust created by the last will and testament of Birdie Lillian Eye, deceased, is seeking to review a decision of the Supreme Court of the Philippines affirming a declaratory judgment rendered by Court of

First Instance of Manila to the effect that the transfer, by virtue of the said will, of shares of stock of Benguet Consolidated Mining Company, a Philippine anonymous partnership (*sociedad anónima*), is properly subject to the Philippine succession tax imposed by section 1536 of the Philippine Administrative Code. The certificates for the shares in question have never been outside of the Philippines and, at the time of decedent's death, were in the possession of the Secretary of the Benguet Consolidated Mining Company, to whom they had been delivered, indorsed in blank.

Argument

1. The Supreme Court of the Philippines, following its construction of the same statute in *Knowles* v. *Yatco*, G. R. No. 42,967 (R. 130), held section 1536 applicable to the transfer here involved. The section imposes a succession tax on

> Every transmission by virtue of inheritance, devise, bequest, * * * of any shares * * * issued by any * * * *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership * * * established in the Philippine Islands, or of any personal property located in the Philippine Islands * * *.

The Benguet Consolidated Mining Company admittedly is a "*sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws"; and a "transmission" of its shares admittedly occurred "by virtue of an inheritance, devise, bequest." Since section 1536 applies expressly to "Every" such "transmission," the courts below obviously did not misconstrue its provisions in holding it applicable to the transmission involved in the case at bar.

Petitioner concedes that the language of the statute is broad enough to be applicable but points to Commonwealth Act No. 106 of 1936 in support of the opposite conclusion. This statute revised the rates imposed by section 1536 and, among other changes made for the purpose of clarification,

amended the first sentence of the section by inserting in the original language the words indicated by italics:

> Every transmission by a decedent, *whether a resident or nonresident*, by virtue of inheritance, devise, bequest, * * *.

Petitioner contends, in effect, that the insertion of the words "whether a resident or nonresident" should be presumed to have filled a need felt by the Philippine Legislature to *change* the *scope* of the original statute and hence to indicate that its application, before the amendment, did not extend to transmissions of shares by nonresident decedents.

This argument is without merit. The presumption invoked by the petitioner is, at best, no more than a mere rebuttable inference untenable in the face of a showing that the Legislature actually had some other reason for its action. Such a showing can be and in fact was made in this case on the appeal before the Supreme Court of the Philippines when petitioner for the first time pointed to the amendment of section 1536 in support of this contention as to its interpretation. Although respondent objected to the injection of the issue at a stage when it was too late to incorporate the pertinent evidence as part of the transcript of record, respondent, nevertheless answering it on the merits, attached as appendices to his brief below certified copies of documents, judicially noticeable, which show that *the Legislature intended to clarify, not to extend, section 1536.* (Report of the Secretary of Finance to the President of the Philippines dated August 6, 1936,[1] on the bill which became Act No. 106; Opinion of the Attorney General of the Philippines, dated November 19, 1932, to the Collector of Internal Revenue.[1]) The object of this particular amendment was to give legislative confirmation to the prior administrative construction of section 1536. *Knowles* v. *Yatco,* G. R. No. 42,967; see also *Gibbs* v. *Government of the Philippines,* G. R. No. 35,694.

[1] See Appendix, *infra.*

The petitioner's only other arguments are based upon the assumption that to construe section 1536 so as to impose a succession tax on the particular transfer involved in the case at bar, would raise a serious doubt as to its constitutionality. This argument is addressed not to the construction of the section but to its constitutionality. And it will be shown in the next point that the statute, as construed and applied herein by the local courts, is not unconstitutional.

All of the arguments made here by petitioner concerning the proper construction of section 1536 were pressed upon the Supreme Court of the Philippines and rejected by that Court. This Court has frequently reiterated its traditional reluctance to disturb the construction placed upon a local statute by the highest court of a Territory and has refused to accept such construction only where there is manifest error. (*Work* v. *United Globe Mines*, 231 U. S. 595 (1914); *Gauzon* v. *Compañia General de Tabacos*, 245 U. S. 86 (1917); *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505 (1939); *Philippine Sugar Co.* v. *Philippine Islands*, 247 U. S. 385 (1918). Obviously, such a case is not presented here.

2. Petitioner challenges the decisions below as contrary to the principles laid down by this Court, particularly in *First National Bank of Boston* v. *Maine*, 284 U. S. 312 (1932),[2] in which the validity of a Maine statute, somewhat

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[2] The other cases on which petitioner relies are:

Farmers Loan & Trust Co. v. *Minnesota*, 280 U. S. 204 (1930);
Baldwin v. *Missouri*, 281 U. S. 586 (1930);
Beidler v. *South Carolina Tax Commission*, 282 U. S. 1 (1930).

All of these cases differ in essential particulars from the instant case. See dissenting opinion, 284 U. S. 312, at page 331. Moreover, they must be considered as modified by the subsequent cases of *Burnet* v. *Brooks*, 288 U. S. 378 (1933); *Curry* v. *McCanless*, 307 U. S. 357 (1939); *Graves* v. *Elliott*, 307 U. S. 383 (1939).

like the statute here involved, was considered. Even if the authority of that case were unimpaired, it would have no application here since it involved essentially different facts. There the Court, over the vigorous dissent of Mr. Justice Stone, in which Mr. Justice Holmes and Mr. Justice Brandeis joined, held that the State of Maine could not levy a succession tax on the transfer upon death of shares of stock in a Maine corporation held by a nonresident decedent where such shares had not otherwise acquired a taxable situs in that State. But here the Supreme Court of the Philippines has expressly rested its decision upon the finding that the decedent, by indorsing the shares in blank and delivering them to a Philippine resident, had effectively localized the shares in the Philippines so that they had acquired a taxable situs there.[3] The court below stated also, in *dicta*, that it believed that in light of the holding of this Court in *Burnet* v. *Brooks*, 288 U. S. 378 (1933), organization of the partnership under Philippine laws, without more, created a sufficient relationship between the Philippine Government and the interest represented by the shares to provide a valid jurisdictional basis for taxation; but it specifically recognized that the instant case did not present that question for decision.

Accordingly, the court below based its judgment on *Curry* v. *McCanless*, 307 U. S. 357 (1939), the decision of this Court most closely analogous to the instant case. In that case the settlor, domiciled in Tennessee, transferred stocks and

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[3] In the *First National Bank of Boston* case, the Court specifically reserved for consideration when it should arise the question presented in this case, stating that:

> We do not overlook the possibility that shares of stock, as well as other intangibles, may be so used in a State other than that of the owner's domicile as to give them a *situs* analogous to the actual *situs* of tangible personal property * * *. That question heretofore has been reserved, and it still is reserved to be disposed of when, if ever, it properly shall be presented for our consideration. [284 U. S. 312, 331.]

bonds to an Alabama trustee under an indenture which reserved the income to the settlor for life. The power to dispose of the trust corpus by will was also reserved. In holding that both Alabama and Tennessee could exact a succession tax, the Supreme Court stated that:

> * * * when the taxpayer extends his activities with respect to his intangibles, so as to avail himself of the protection and benefit of the laws of another State, in such a way as to bring his person or property within the reach of the tax gatherer there, the reason for a single place of taxation no longer obtains, * * *. [307 U. S. 357, 367.][4]

The case at bar clearly falls within the doctrine of the *McCanless* case. Here the taxpayer had extended her activities with respect to her intangibles to the Philippines and had availed herself of the protection and benefits of the laws of the Commonwealth. She had, moreover, by indorsing the certificates in blank and delivering them to a Philippine resident, brought the property itself within the reach of the Philippine tax gatherer.[5] The *McCanless* case and the instant

[4] The dissenting justices in *Curry* v. *McCanless* did not question the validity of the tax by the State in which the physical evidences of the intangibles were held in trust. They questioned only the validity of a tax by the State of domicile, stating that:

> * * * The general rule of *mobilia sequuntur personam* must yield to the established fact of legal ownership, actual presence and control in a State other than that of the domicile of the owner. [307 U. S. 357, 381.]

[5] The court below held that the indorsement in blank and delivery of the shares to Syrena McKee, secretary of the company, gave to her

> * * * the right to vote the certificates at the general meetings of the stockholders, to collect dividends thereon, and dispose of the shares in the manner she may deem fit, without prejudice to her liability to the owner for violation of instructions. For all practical purposes, then, Syrena McKee had the legal title to the certificates of stock held in trust for the true owner, thereof. * * *

The petitioner challenges the validity of this holding on the ground that it is "unsupported by anything in the record" (Brief, p. 25). Even if petitioner's contention on this point

case are, therefore, in all essential respects identical. This case presents no problem not considered by this Court in the *McCanless* case and no solution not prescribed by this Court in that case.

Conclusion

The judgment of the Supreme Court of the Philippines is correct and in accord with the decisions of this Court. The petition should be denied.

Respectfully submitted,

NATHAN R. MARGOLD,
Solicitor for the
Department of the Interior,
Washington, D. C.
Attorney for Respondent.

ROMAN OZAETA,
Solicitor General of the Philippines,
Manila, P. I.

ROBERT E. FRIEDMAN,
Assistant Solicitor,
Department of the Interior,
Washington, D. C.
Of Counsel.

February 27, 1941.

[5 cont.] were valid, it has not been included in the specification of errors and could not be urged here. Furthermore, petitioner's bare statement that the decision below is, in this respect, unsupported by the record, is contradicted by the showing in the record that the shares were delivered to the secretary of the company indorsed in blank. Petitioner really objects, not to the lack of substantiating evidence, but to the holding of the lower court as to the legal effect under the local laws of the delivery of the certificate indorsed in blank. It is familiar doctrine that this Court will, in default of a clear showing of error, accept the statement of local law announced by the Territorial Court. *Waialua Agricultural Co.* v. *Christian*, 305 U. S. 91 (1938); *Gauzon* v. *Compañia General de Tabacos*, 245 U. S. 86 (1917).